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MYERS BIGEL SIBLEY & SAJOVEC			NAJARIAN, LENA	
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DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/803,492

Applicant(s)

GERRING, KENNETH RONALD

Examiner

Lena Najarian

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 1-8, 24-30, 32-34 and 36-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-23, 31, 35 and 39 is/are rejected.
- 7) ☒ Claim(s) 23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 June 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 20010309.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group II (claims 9-23, 31, 35, and 39) in the reply filed on 7/15/05 is acknowledged.
2. Claims 1-8, 24-30, 32-34, and 36-38 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/15/05.
3. The Examiner has considered Applicant's remarks regarding the examination of Invention III, however, since Invention II and Invention III have acquired a separate status in the art as shown by their different classification, restriction is proper.

Drawings

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: item 362 (Fig. 3). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet"

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or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

5. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because its length exceeds 150 words. Correction is required. See MPEP § 608.01(b).

Claim Objections

6. Claim 23 is objected to because of the following informalities: there are typographical errors. For purposes of applying prior art, the Examiner interprets the claim to recite "a forms module that is configured to complete government and insurance billing forms from the assessment plan." Appropriate correction is required.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 9-23, 31, 35, and 39 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

(A) Claim 9 recites "a psychiatric information system comprising: a psychiatric dialogue box..." The current claim language does not clarify that a computer processor or structure is part of the recited system or that the recited elements (i.e. the database repository) are embodied and executable on a computer readable medium.

Data structures not embodied on a computer readable media are considered descriptive material. They are therefore considered non-statutory because they are not capable of causing a functional change in a computer. As drafted, the claim fails to define any structural and functional interrelationships between the dialogue boxes and other elements of a computer that permit the computer program's function to be realized. (See MPEP § 2106)

For a claimed invention to be statutory, the claimed invention must also produce a useful, concrete, and tangible result. Under this analysis, the present language of claims 9-23 merely recites non-functional descriptive material, as no recitation of executable code being embodied on any medium or data structure is provided. Simply stated, the "dialogue box" as recited in claim 9 fails to have a tangible result.

Similarly the database repository of claim 9, per se, is not statutory and is deemed to be a collection of non-functional descriptive material. While a database by

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itself may broadly be considered a means for storing data, it does not produce a useful, tangible and concrete result. The database is merely to be stored, to be read, or to be outputted (e.g. by a computer) without establishing any functional interrelationship, and thus does not impart any functionality to the computer (i.e. it is not a computer component).

In light of the above, it is respectfully submitted that the invention of claims 9-23, does not have a tangible result, and thus fails to recite the practical application of an abstract idea to satisfy the requirements of 35 U.S.C. 101.

As per claim 31, a similar 101 analysis may be applied to the language of claim 31, which recites similar language to that found in claims 9-23. Therefore, it is respectfully submitted that the invention of claim 31, also does not have a tangible result, and thus also fails to recite the practical application of an abstract idea to satisfy the requirements of 35 U.S.C. 101.

(B) Claim 35 recites " a computer program product for. . ." in the preamble. Data structures not embodied and executable on a computer readable media are considered descriptive material. They are therefore considered non-statutory because they are not capable of causing a functional change in a computer. As drafted, the claim fails to define any structural and functional interrelationships between the code and other elements of a computer that permit the computer program's function to be realized.

(See MPEP § 2106)

(C) Claim 39 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, claim 39 only recites an abstract idea. The recited steps of merely storing information in a database, displaying at least some of the stored information, accepting a treatment recommendation, storing the treatment recommendations, and generating a treatment plan does not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, the claimed invention generates a treatment plan for the psychiatric patient from stored information. Although the recited process produces a useful, concrete, and tangible result, since the claimed invention, as a whole, is not within the technological arts as explained above, claim 39 is deemed to be directed to non-statutory subject matter.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claim 39 is rejected under 35 U.S.C. 102(e) as being anticipated by Bair et al. (6,067,523).

(A) Referring to claim 39, Bair discloses a psychiatric information method comprising:

storing information concerning symptoms (col. 12, lines 56-65 of Bair),

medications (Fig. 5 of Bair), psychological tests (Fig. 15 of Bair), psychological history (Fig. 8 and Fig. 9 of Bair) and medical history of a psychiatric patient in a database (col. 3, lines 46-48 and col. 7, lines 56-67 of Bair);

displaying at least some of the stored information concerning symptoms, medications, psychiatric tests, psychiatric history and medical history of the psychiatric patient (col. 11, lines 47-51 of Bair);

accepting a treatment recommendation for the psychiatric patient in response to the displaying (Fig. 9 and col. 5, lines 63-66 of Bair);

storing the treatment recommendations for the psychiatric patient in a database (col. 6, lines 22-34, col. 10, lines 42-46, and Fig. 2 of Bair); and

automatically generating a treatment plan for the psychiatric patient from the stored information and from the stored treatment recommendation (col. 10, lines 37-56 of Bair).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 9, 12, 14, 18-20, 31, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bair et al. (6,067,523) in view of Ilse et al. (US 6,757,898 B1).

(A) Referring to claim 9, Bair discloses a psychiatric information system comprising (col. 1, lines 12-14 of Bair; the Examiner interprets "behavioral health information system" to be a form of "psychiatric information system"):

a psychiatric diagnosis dialogue box that is configured to capture psychiatric diagnoses of psychiatric patients (col. 10, lines 42-47, col. 1, lines 57-62, and Fig. 9 of Bair);

a past psychiatric history dialogue box that is configured to capture past psychiatric histories of psychiatric patients (Fig. 8 and Fig. 9 of Bair);

a social history dialogue box that is configured to capture social histories of psychiatric patients (col. 8, lines 58-67 of Bair; the Examiner interprets "relationships" to be a form of "social history");

a mental status exam dialogue box that is configured to capture results of standardized mental status tests of psychiatric patients (Fig. 15 of Bair);

and a database repository that is configured to store the data elements that are captured by the psychiatric diagnosis dialogue box, the past psychiatric history dialogue box, the social history dialogue box and the mental status exam dialogue box (Fig. 2 and col. 8, line 49 – col. 9, line 8 of Bair).

Bair does not expressly disclose discrete data elements.

Ilсен discloses discrete data elements (col. 16, lines 45-52 of Ilсен).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine Ilсен's capturing of data as discrete data elements within Bair. The motivation for doing so would have been to discover relationships among the data (col. 16, lines 45-52 of Ilсен).

(B) Referring to claims 12 and 14, Bair discloses a medications dialogue box that is configured to capture information concerning medications used by psychiatric patients (Fig. 5 of Bair) and a developmental dialogue box that is configured to capture information concerning stages of development of psychiatric patients (col. 6, lines 12-21 of Bair; the Examiner interprets "progress" to be a form of "stages of development"); the database repository being further configured to store the data elements that are captured by the medications dialogue box and captured by the developmental dialogue box (Fig. 2 and col. 8, line 49 – col. 9, line 8 of Bair).

Bair does not expressly disclose discrete data elements.

Ilсен discloses discrete data elements (col. 16, lines 45-52 of Ilсен).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine Ilsen's capturing of data as discrete data elements within Bair. The motivation for doing so would have been to discover relationships among the data (col. 16, lines 45-52 of Ilsen).

(C) Referring to claims 18-20, Bair discloses a query module that is configured to initiate queries of the data elements that are captured by the psychiatric diagnosis dialogue box, the past psychiatric history dialogue box, the social history dialogue box and the mental status exam dialogue box that are stored in the database repository (col. 2, lines 34-38 of Bair), a data mining module that is configured to perform data mining of the data elements that are captured by the psychiatric diagnosis dialogue box, the past psychiatric history dialogue box, the social history dialogue box and the mental status exam dialogue box that are stored in the database repository, to produce data mining results that are free of personal identifying information on the psychiatric patients (col. 7, lines 56-67 of Bair), and a billing module that is configured to generate medical bills from the data elements that are captured by the psychiatric diagnosis dialogue box, the past psychiatric history dialogue box, the social history dialogue box and the mental status exam dialogue box that are stored in the database repository (col. 8, lines 37-41, col. 10, lines 9-23, Fig. 2 and col. 8, line 49 – col. 9, line 8 of Bair).

Bair does not expressly disclose discrete data elements.

Ilsen discloses discrete data elements (col. 16, lines 45-52 of Ilsen).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine Ilsen's capturing of data as discrete data elements within Bair.

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The motivation for doing so would have been to discover relationships among the data (col. 16, lines 45-52 of Ilsen).

(D) Method claim 31 repeats the same limitations of system claim 9, and is therefore rejected for the same reasons given for that claim.

(E) Claim 35 differs from claim 9 by reciting “a computer program product comprising a computer usable storage medium having computer-readable program code embodied in the medium” within its preamble. As per these elements, Bair’s behavioral health information system includes a number of system elements, including a database (Fig. 2 and col. 6, lines 44-65 of Bair). As such, it is readily apparent that Bair’s behavioral health information system includes a computer program product.

The remainder of claim 35 repeats the same limitations of claim 9, and is therefore rejected for the same reasons given above for claim 9, and incorporated herein.

12. Claims 10, 11, 13, 15, 16, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bair et al. (6,067,523) in view of Ilsen et al. (US 6,757,898 B1), as applied to claim 1 above, and further in view of Lavin et al. (5,772,585).

(A) Referring to claims 10, 11, 13, 15, and 16, Bair discloses psychiatric patients (col. 1, lines 57-65 of Bair) and a database repository being configured to store data elements that are captured by the dialogue boxes (Fig. 2 and col. 8, line 49 – col. 9, line 8 of Bair).

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Bair does not disclose a medical history dialogue box that is configured to capture non-psychiatric medical histories of patients, a substance history dialogue box that is configured to capture histories of substance use by patients, an allergies dialogue box that is configured to capture information concerning allergies of patients, a family history dialogue box that is configured to capture information concerning family histories of patients, and a physical exam dialogue box that is configured to capture information concerning physical exams of patients, as discrete data elements.

Lavin discloses a medical history dialogue box that is configured to capture non-psychiatric medical histories of patients (Fig. 11 of Lavin), a substance history dialogue box that is configured to capture histories of substance use by patients (col. 12, lines 58-61 of Lavin), an allergies dialogue box that is configured to capture information concerning allergies of patients (Fig. 14 and Fig. 19 of Lavin), a family history dialogue box that is configured to capture information concerning family histories of patients (Fig. 10 of Lavin), and a physical exam dialogue box that is configured to capture information concerning physical exams of patients (Fig. 16C of Lavin).

Bair does not expressly disclose discrete data elements.

Ilсен discloses discrete data elements (col. 16, lines 45-52 of Ilсен).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine Ilсен and Lavin within Bair. The motivation for doing so would have been to discover relationships among the data (col. 16, lines 45-52 of Ilсен) and to provide a comprehensive system for managing patient medical information that would assist with the examination and diagnosis of patients (col. 16, lines 1-10 of Lavin).

(B) Referring to claim 22, Bair discloses individuals who are undergoing psychiatric treatment (col. 1, lines 32-38 of Bair) and capturing of data by the psychiatric diagnosis dialogue box, the past psychiatric history dialogue box, the social history dialogue box and the mental status exam dialogue box that are stored in the database repository (Fig. 2 and col. 8, line 49 – col. 9, line 8 of Bair).

Bair does not disclose an assessment plan module that is configured to generate an assessment plan for individuals who are undergoing treatment and Bair does not expressly discrete data elements.

Lavin discloses an assessment plan module (col. 2, lines 12-16 of Lavin).

Ilse discloses discrete data elements (col. 16, lines 45-52 of Ilse).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Lavin and Ilse within Bair. The motivation for doing so would have been to discover relationships among the data (col. 16, lines 45-52 of Ilse) and to update the progress of patients (col. 2, lines 12-16 of Lavin).

13. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bair et al. (6,067,523) in view of Ilse et al. (US 6,757,898 B1) as applied to claim 1 above, and further in view of Lavin et al. (5,772,585) and Soll et al. (US 2003/0055679 A1).

(A) Referring to claim 17, Bair discloses a database repository configured to store data elements captured (Fig. 2 and col. 8, line 49 – col. 9, line 8 of Bair).

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Bair does not expressly disclose discrete data elements and a labs/imaging dialogue box that is configured to capture results of laboratory tests and medical imaging tests of psychiatric patients.

Ilse discloses discrete data elements (col. 16, lines 45-52 of Ilse).

Lavin discloses capturing results of laboratory tests (Fig. 20A).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Lavin and Ilse within Bair. The motivation for doing so would have been to discover relationships among the data (col. 16, lines 45-52 of Ilse) and to store data for later retrieval and reference (col. 12, lines 11-14 of Lavin).

Soll discloses medical imaging tests of psychiatric patients (para. 2 and para. 10 of Soll).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Soll within Lavin, Ilse, and Bair. The motivation for doing so would have been to detect disturbances in the patient (para. 2 of Soll).

14. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bair et al. (6,067,523) in view of Ilse et al. (US 6,757,898 B1) as applied to claims 9 and 20 above, and further in view of Miller (5,235,702).

(A) Referring to claim 21, Bair discloses data from the psychiatric diagnosis dialogue box, the past psychiatric history dialogue box, the social history dialogue box and the

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mental status exam dialogue box that are stored in the database repository (Fig. 2 and col. 8, line 49 – col. 9, line 8 of Bair) and a billing module (col. 8, lines 37-41 of Bair).

Bair does not expressly disclose discrete data elements and wherein the billing module is further configured to complete government and insurance forms.

Ilсен discloses discrete data elements (col. 16, lines 45-52 of Ilсен).

Miller discloses government and insurance forms (col. 7, lines 46-50 & 63-67 of Miller).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Ilсен and Miller within Bair. The motivation for doing so would have been to discover relationships among the data (col. 16, lines 45-52 of Ilсен) and to provide a convenient way to fill out claim forms (col. 7, lines 46-50 & 63-67 of Miller).

15. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bair et al. (6,067,523) in view of Ilсен et al. (US 6,757,898 B1) in view of Lavin et al. (5,772,585) as applied to claims 9 and 22 above, and further in view of Miller (5,235,702).

(A) Referring to claim 23, Bair discloses a forms generator (col. 1, lines 46-50 of Bair).

Lavin discloses an assessment plan (col. 2, lines 12-16 of Lavin).

Bair, Ilсен and Lavin do not disclose completing government and insurance billing forms.

Miller discloses government and insurance billing forms (col. 7, lines 46-50 & 63-67 of Miller).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Miller within Bair, Ilse, and Lavin. The motivation for doing so would have been to provide a convenient way to fill out claim forms (col. 7, lines 46-50 & 63-67 of Miller).

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not applied prior art teaches a method and apparatus for predicting therapeutic outcomes (5,860,917); a method of diagnosing, tracking, and treating depression (US 6,322,503 B1); a computer system and method for storing medical histories using a smartcard to store data (5,832,488); and a method for mediating social and behavioral processes in medicine and business through an interactive telecommunications guidance system (5,722,418).


17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lena Najarian whose telephone number is 571-272-7072. The examiner can normally be reached on Monday - Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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8-8-05


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